



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/594,469

07/16/2007

Alexander James Peacop

13877/39001

1310

26646

7590

09/14/2011

KENYON & KENYON LLP  
ONE BROADWAY  
NEW YORK, NY 10004

EXAMINER

ELOSHWAY, NIKI MARINA

ART UNIT

PAPER NUMBER

3728

MAIL DATE

DELIVERY MODE

09/14/2011

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/594,469	<b>Applicant(s)</b> PEACOP ET AL.	
	<b>Examiner</b> NIKI ELOSHWAY	<b>Art Unit</b> 3728	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 August 2011.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on \_\_\_\_; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 5) ☒ Claim(s) 1,3-8 and 12-19 is/are pending in the application.
- 5a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 6) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 7) ☒ Claim(s) 1, 3-8, 12-19 is/are rejected.
- 8) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 9) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____.                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____.  | 6) <input type="checkbox"/> Other: ____.                          |

Art Unit: 3728

## DETAILED ACTION

### *Priority*

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 12-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are considered vague and indefinite for the following reasons:

- (a) Claims 12-15 depend from cancelled claim 10.
- (b) Claims 16-18 depend from cancelled claim 2.

### *Claim Rejections - 35 USC § 102*

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 3-8 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Landis (U.S. 5,294,015). Landis teaches an arrangement comprising an open-ended container 22 and closure 20 therefor. The container comprises at least one projection 46 extending at least partially around its outer surface adjacent the rim 26 of its open, upper end. The closure comprises a cover 30 for extending over

Art Unit: 3728

the open upper end and a skirt 38 depending therefrom having an upper portion at lead line 74 and a lower portion below hinge line 61. The lower portion could also be considered the portion extending at and below projections 48. The lower portion of the skirt may be flipped between a raised configuration, shown in figure 6, for mounting and removal of the cover on the container and a lowered configuration, shown in figure 7, in which it engages with the projection of the container thereby to retain the cover on the container. The whole of the lower portion of the skirt is divided into at least two discrete peripheral sections, seven are shown in the drawings, that may be flipped between the raised and lowered configurations independently of each other, as discussed in col. 8 line 55 through col. 9 line 37. The channel is shown at 40. The inwardly directed projection is shown at 48 which engages with 46, as shown in figure 11. The slits are formed after initial tearing of the frangible lines 64, as discussed in col. 9 lines 18-37.

### ***Response to Arguments***

6. Applicant's arguments filed August 17, 2011 have been fully considered but they are not persuasive. Applicant's argues that Landis does not teach that "the skirt include at least one inwardly directed projection dividing the upper and lower portions". The Examiner disagrees with this position. Landis teaches a skirt 38 which can be divided into an upper portion and a lower portion. In fact, the skirt 38 of Landis can be divided into three portions. The upper portion of the skirt is the portion above the hinge line at lead line 60, the lower portion of the skirt is the portion below the projection at lead line 48, and the intermediate dividing section of the skirt is the section that extends from the hinge at 60 to and including the projection at lead line 48. With this interpretation of the Landis skirt, the closure assembly of Landis meets the limitations of the claims.

7. Applicant argues that Landis does not teach the annular channel. The Examiner disagrees with this position. Landis teaches a channel bounded by skirt 38 and wall 36. This channel receives the rim of

Art Unit: 3728

the container, and the channel is located laterally between the upper portion of the skirt and the cover.

The channel extends from the wall at lead line 54 to the lower edge of the wall 36. Even with the gasket, the channel receives the rim of the container.

8. The new grounds of rejection, under 35 U.S.C. 112, second paragraph, was necessitated by the amendment filed August 17, 2011.

### *Conclusion*

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NIKI ELOSHWAY whose telephone number is (571)272-4538. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3728

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Niki M. Eloshway/  
Niki M. Eloshway  
Examiner  
Art Unit 3728

nme

/Mickey Yu/  
Supervisory Patent Examiner, Art Unit 3728